

THE PORT AUTHORITY OF NY & NJ

Law Department

4 World Trade Center
150 Greenwich Street
New York, NY 10007

April 25, 2023

VIA ECF

Honorable Pamela K. Chen
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11208

Re: Suriel v. The Port Authority of New York & New Jersey et al.
1:19 civ 3867 (PKC) (ST)

Dear Judge Chen:

The Port Authority of New York and New Jersey (the “Port Authority”) and Police Officers Andrew Samuel and Brett Telesford request a conference to clarify the issues with respect to defendants’ pending motion for partial summary judgment in light of the Third Amended Complaint filed on April 14, 2023.

On May 24, 2022, this Court so ordered plaintiff’s voluntary dismissal of all claims against Police Officers Opromalla and Khan, and the claim of denial of the right to a fair trial against Telesford. On July 26, 2022, the Port Authority defendants served a motion for partial summary judgment against the claims asserted in the Second Amended Complaint seeking to dismiss certain claims as follows: 1) unlawful stop; 2) malicious abuse of process; 3) negligence – negligent hiring, training and retention; 4) intentional infliction of emotional distress; 5) negligent infliction of emotional distress; 6) the claim of failure to intervene against Samuel (the arresting officer) and the claim of false arrest against Telesford (the assisting officer); 7) *Monell* claims; 8) the state law claims against Telesford; 9) the claim against the Port Authority Police Department.

Plaintiff cross-moved for summary judgment on his claim for a denial of a fair trial and to amend the Complaint to add a claim for malicious prosecution. The motion papers of both parties were filed with the Court on September 30, 2022 pursuant to this Court’s bundling rule.

On March 31, 2023, this Court issued an order denying “Plaintiff’s spoliation motion and granting Plaintiff’s motion “to amend to add the Section 1983 claim for malicious prosecution.” The Court reserved on the motions for partial summary judgment and directed Plaintiff to file the Amended Complaint within 14 days.

THE PORT AUTHORITY OF NY & NJ

On April 14, 2023, Plaintiff filed the Third Amended Complaint. This Third Amended Complaint not only added a claim for malicious prosecution, it omitted the claims for unlawful stop, malicious abuse of process and the state law claims for intentional infliction of emotional distress and negligent infliction of emotional distress, which are included in defendants' motion for partial summary judgment. The Third Amended Complaint also dropped the Port Authority Police Department as a defendant, which is a claim also addressed in defendants' motion of summary judgment.

This Court should not be burdened with considering claims in the pending motion for summary judgment that have been withdrawn with prejudice. For this reason, defendants request a conference for the purpose of clarifying plaintiff's claims in this action and whether the claims omitted from the Third Party Complaint have been withdrawn with prejudice.

Respectfully submitted,



Kathleen Gill Miller

KGM:kc

Encls.

cc:

Elefterakis Elefterakis & Panek

80 Pine Street

38th Floor

New York, New York 10005

Gabriel Harvis, Esq. (gharvis@elefterakislaw.com)

Baree Fett, Esq. (bfett@elefterakislaw.com)

VIA ECF